

STATE OF MICHIGAN
COURT OF APPEALS

C. DAVEY JENKS,

Plaintiff-Appellant,

v

DIANE LONCAR,

Defendant-Appellee.

UNPUBLISHED

January 4, 2000

No. 209141

Wayne Circuit Court

LC No. 96-630636 NI

Before: Saad, P.J., and McDonald and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right the circuit court order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The parties to this action were previously married, and were involved in a contentious divorce. During the custody dispute defendant alleged that plaintiff sexually abused their child, and she took the child and absconded from the state. As part of the settlement of issues arising after the divorce, defendant agreed to pay plaintiff \$25,000 in full settlement of all claims of restitution plaintiff claimed or could have claimed against defendant for leaving the jurisdiction with the minor child.

Prior to the settlement of the divorce action, plaintiff brought this action for intentional or negligent infliction of emotional distress. Defendant moved for summary disposition, arguing *inter alia*, that plaintiff was estopped from bringing this action where his claims were litigated in the divorce and post-divorce proceedings. The trial court granted the motion.

A separate action for intentional infliction of emotional distress may be maintained apart from divorce and custody proceedings where the two actions are not sustained by the same proofs. *Bhama v Bhama*, 169 Mich App 73; 425 NW2d 733 (1988). However, collateral estoppel precludes relitigation of an issue in a subsequent cause of action between the same parties where the prior proceeding culminated in a valid judgment and the issue was actually and necessarily litigated. *Hawkins v Murphy*, 222 Mich App 664, 672; 565 NW2d 674 (1997). Res judicata bars a litigant from relitigating a claim when the former action was decided on the merits or the matter could have been

decided in the first action and the two actions are between the same parties. *In re Quintero Estate*, 224 Mich App 682, 689; 569 NW2d 889 (1997). Thus, although plaintiff could have maintained a separate action for emotional distress, these claims were litigated in the post-divorce proceedings, and further litigation of these same claims is barred.

Affirmed.

/s/ Henry William Saad

/s/ Gary R. McDonald

/s/ Hilda R. Gage